

U.S. Application No. 10/695,008, filed October 28, 2003
Attorney Docket No. 15128US02
Response dated February 22, 2011
In Response to Office Action mailed September 21, 2010

REMARKS

The Office Action at page 2 states, under the heading “Election/Restrictions,” that “Applicant’s election without traverse of claims 1-22, 38-51, 54-57 in the reply filed on 7/22/10 is acknowledged.”

Applicants did not take the election without traverse. In particular, Applicants respectfully direct the attention of the Examiner to pages 12-13 of the Response filed July 22, 2010 in which Applicants challenge the restriction based on at least M.P.E.P. 806.05(d).

Applicants respectfully request that the Examiner reconsider the election/restriction requirement for the reasons as reproduced below from the Response filed July 22, 2010:

For the Restriction/Election Requirement, the Examiner alleges the following groups:

Group I: Claims 1-22, 38-51 and 54-57
Group II: Claims 23-37, 52 and 53

Since Applicants are required to elect a group, Applicants elect Group I and respectfully request that claims 1-22, 38-51 and 54-57 be prosecuted in the present application.

However, Applicants respectfully request that the Examiner reconsider the Restriction/Election Requirement for at least the reasons as set forth below.

M.P.E.P. 806.05(d) states that “[t]wo or more claimed subcombinations, disclosed as usable together in a single combination, and which can be shown to be separately usable, are usually restrictable **when the subcombinations do not overlap in scope** and are not obvious variants.”

Thus, according to M.P.E.P. 806.05(d), it is inappropriate to restrict unless the subcombinations do not overlap in scope.

Applicants respectfully submit that Group I and Group II **do overlap in scope** and thus should not be separately grouped and should not be subject to a restriction/election requirement.

To demonstrate that Group I and Group II do overlap in scope, Applicants respectfully draw the attention of the Examiner to claim 1 of Group I and claim 23 of Group II, for example.

A.

As evidence that claim 1 of Group I and claim 23 of Group II do overlap in scope, Applicants note that **both** claim 1 of Group I and claim 23 of Group II relate to “[a] system for protecting data” as stated in identical preambles. Thus, claim 1 of Group I and claim 23 of Group II **do overlap in scope**.

B.

As further evidence that claim 1 of Group I and claim 23 of Group II do overlap, Applicants note that **both** claim 1 of Group I and claim 23 of Group II recite “a memory in which encrypted data is stored.” Thus, claim 1 of Group I and claim 23 of Group II **do overlap in scope**.

C.

As further evidence that claim 1 of Group I and claim 23 of Group II do overlap, Applicants note that **both** claim 1 of Group I and claim 23 of Group II recite “a processor coupled to the memory, the processor comprising a decryptor that decrypts the encrypted data.” Thus, claim 1 of Group I and claim 23 of Group II **do overlap in scope**.

D.

As yet further evidence that claim 1 of Group I and claim 23 of Group II do overlap, Applicants note that claim 1 in Group I recites “the decryptor being adapted to variably bit roll the encrypted data based on at least a data address” and that claim 23 in Group II recites “wherein decryptor comprises a variable bit roller that variably bit rolls encrypted data based on at least ... the data address.” Thus, claim 1 of Group I and claim 23 of Group II **do overlap in scope**.

For at least the above reasons, it is respectfully submitted that Group I and Group II **do overlap in scope** and thus should not be subject to a restriction/election requirement.

With respect to the rejected claims, Applicants have amended claim 1 to expedite prosecution and to further clarify the subject matter therein. Applicants respectfully submit that in view of at least the amendments herein, a prima facie case of obviousness has not been

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presented.

It is respectfully requested that the rejection be withdrawn with respect to claims 1-22, 38-51 and 54-57.

Applicants do not necessarily agree with the Examiner's characterization of the documents made of record, either alone or in combination, or the Examiner's characterization of recited claim elements. Furthermore, Applicants respectfully reserve the right to argue the characterization of the documents of record, either alone or in combination, to argue what is allegedly well known, allegedly obvious or allegedly disclosed, or the characterization of the recited claim elements should that need arise in the future.

Applicants respectfully reserve the right to pursue, without prejudice in a continuing and/or related application, subject matter (e.g., claimed subject matter) that has been withdrawn, amended and/or cancelled.

With respect to the present application, Applicants hereby rescind any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer of claim scope, if any, and the alleged prior art that it was made to allegedly avoid, may need to be revisited. Nor should a disclaimer of claim scope, if any, in the present application be read back into any predecessor or related application.

In view of at least the foregoing, it is respectfully submitted that the present application is in condition for allowance. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, to charge any fee deficiencies or to credit any overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: February 22, 2011

Respectfully submitted,

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